IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 2715 of 2003

For Approval and Signature:

Hon'ble MR.JUSTICE JAYANT PATEL

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

HEIRS OF BHAVANISHANKER HARISHANKER DAVE

Versus

REVABEN WD/O. BABUBHAI CHHAGANBHAI

Appearance:

1. Special Civil Application No. 2715 of 2003

MR MB PARIKH for Petitioner No. 1-3

MR RAJESH R DEWAL for Respondent No. 1-4

CORAM : MR.JUSTICE JAYANT PATEL

Date of decision: 24/04/2003

ORAL JUDGEMENT

1. Rule. Mr.Kinariwala appearing for respondents waives notice. With consent of parties the matter is

taken up for final hearing.

2. The present petition is preferred by the petitioners for challenging the legality and validity of the order dated 31-12-2002 passed by the Gujarat Revenue Tribunal in Application No.119/1999 whereby the Tribunal directed the Mamlatdar to consider the matter under Section 70B of the Tenancy Act and till then the status-quo as existing is ordered to be maintained.

3. Heard Mr.M.C.Shah, learned Counsel for the petitioners and Mr.Kinariwala, learned Counsel for the respondents.

4. Mr.M.C.Shah for the petitioners submitted that he has no objection if the order of status-quo is ordered to be maintained as on 31-12-2002 and he further submitted that the petitioners were in possession and is in possession and, therefore, if such status-quo is ordered to be maintained, the petitioners have no objection for such purpose, because, in his submission, the petitioners have not entered the possession after 31-12-2002.

5. However, Mr.Kinariwala appearing for the respondents disputed to such statement, but he has also no objection if status-quo is ordered to be maintained from the date of the order of Tribunal.

6. Considering the above and more particularly in view of the facts and circumstances narrated to in the order, I am of the view that when the Tribunal has directed the Mamlatdar to decide the application and till then status-quo is ordered to be maintained, it cannot be said to be a jurisdictional error to that extent, but instead of the status-quo as existing on 30-11-1999, the status-quo as on 31-12-2002 should be maintained, because the Tribunal, in any case, ought not to have restored the position ante while referring the matter to the Mamlatdar and, therefore, to that extent it can be said that there is error and the order deserves to be modified, more particularly both the sides have also no objection for ordering status-quo as existing on 31-12-2002 as recorded hereinabove.

7. In above view of the matter, the order of the Tribunal dated 31-12-2002 which is impugned in this petition is modified only to the extent that instead of the status-quo as existing on 30-11-1999, the status-quo as existing on 31-12-2002 shall be maintained and the rest of the portion of the order of the Tribunal is not disturbed for the present in view of the facts and

circumstances that the Mamlatdar is ordered to decide the application under Sections 70B, 32FF and 32 of the Tenancy Act. It is further clarified that it will be open to the petitioners to move the Mamlatdar to decide the question of factum of possession on the date when the Tribunal passed the order i.e. 31-12-2002 and if such application is made, the Mamlatdar may decide the same expeditiously in accordance with law. The petition shall stand allowed only to the aforesaid extent. Rule made absolute accordingly. No costs.

24-4-2003 (Jayant Patel, J.)

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